

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Cushing et al.

Application Serial No: 09/699,503

Filing Date: October 31, 2000

Title: System and Method for Executing Strategy
Security Trading

Group Art Unit: 3693

Examiner: Jason M. Borlinghaus

Confirmation No.: 1384

Docket No.: 2566-106

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Patentees request that the Office revise, if necessary, the Patent Term Adjustment (PTA) calculated in connection with the above-identified now issued U.S. Patent. The number of days calculated by the Office was 193. However, under the recent decision in *Wyeth v. Dudas*, Patentees believe that they are entitled to additional PTA. Specifically, the PTA should be based on the number of “A” delays plus the number of “B” delays minus any overlap between the two and the applicant’s delay. See *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 141-142 (D.D.C. Sept. 30, 2008). “A” delays include time periods where the PTO has failed “to comply with various enumerated statutory deadlines: fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like.” *Id.* at 139. “B” delays include the time period between the 3 years from the filing date and when prosecution is closed. *Id.* at 140.

Thus, applying *Wyeth*, the proper amount of PTA is 233 days, not 193, and the patent is entitled to an additional 40 days of PTA. In this case, the following dates apply:

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|------------------------------|---|
| Filing date = | October 31, 2000 |
| 14 month date = | December 31, 2001 |
| Three year date = | October 31, 2003 |
| First Office Action = | February 11, 2003 |
| Issue Date = | November 3, 2009 |
| “A” delays = | 487 days |
| “B” delays = | 40 days |
| Overlap = | 0 days |
| Applicant delay = | 294 days |
| Total PTA = | First period + Second Period – Applicant Delay = 487 + 40 – 294 = <u>233 days</u> . |

Patentees, therefore, request appropriate correction of the PTA. Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

Respectfully submitted,

Date: January 4, 2010

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